IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5879 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHBHAI AMRATBHAI MODI 3, JAIKRISHNANAGAR SOCIETY

Versus

ELECTION OFFICER, ANKLESHWAR NAGAR PALIKA

Appearance:
MR RN SHAH for Petitioner
MR NV ANJARIA for Respondent No. 1
MS BR GAJJAR, ld.AGP for Respondents No.2
HL PATEL ADVOCATES for Respondent No. 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/10/2001

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India has challenged the order

dated 7th June 2000 passed by the learned Extra Assistant Judge, Bharuch in Election Petition No.1 of 2000 rejecting the said Election Petition. The petitioner challenged the decision of the Election Officer dated 4.1.2000 in the said Election Petition.

2. The facts giving rise to the present petition are as under:

The Election of Ward No.1 of Ankleshwar Nagarpalika was held on 2.1.2000. The petitioner was a candidate of the said Ward and respondent no.3 was also a candidate of the said Ward. The counting was held on 4.2.2000 under the supervision of the Election Officer, respondent no.1, who declared the result of the Election of Ward No.1 wherein the petitioner secured 1321 votes while respondent no.3 secured 1322 votes. The respondent no.3 was thus declared elected member of Ward No.1. The petitioner filed application for recounting of the votes to respondent no.1 on the ground that there was irregularity in counting of votes and since there was a difference of only one vote, the recounting may be ordered. The said application was filed under the provisions of Rule 62 of the Gujarat Nagarpalika (Election) Rules, 1994. The respondent no.1 rejected the said application, against which the Election Petition was filed. The learned Extra Assistant Judge, Bharuch rejected the Election Petition relying upon the decision of this Court rendered in in the case of Kakvani Hasumal Lilaram v. Bhakhrani Gafar Alimohamed and ors., reported in 1972 GLR 624 wherein it was held that, recounting or scrutiny of votes cannot be ordered on nebulous allegations and material particulars must be supplied by the petitioner.

3. The Division Bench of this Court has considered the above decision, i.e. Kakvani Hasumal Lilaram (supra) in a decision rendered in the case of Manavar Shankerbhai Mansang v. Pandya Shankerlal Amiram and ors., reported in 1997 (3) GLR 2478 wherein at para 10 of the said judgment it is observed that, having regard to the narrowest margin of one vote only, and there was change of result and non-consideration of 67 votes of the third candidate and 11 invalid votes at recounting, there was sufficient cause for permitting the recounting.

4. However, in view of the latest decision of the Apex Court rendered in the case of Vadivelu v. Sundaram and others, reported in (2000) 8 SCC 355, the entire controversy has been set at naught. The Apex Court has held that re-counting cannot be ordered on the basis of

general and bald allegations. To succeed, an election petition should contain details regarding illegality or irregularity alleged to have been committed and that the petitioner seeking re-counting should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. In the opinion of the Apex Court, the Court can order re-count only if it is satisfied about the truthfulness of the allegations in the pleadings. Thus, on the facts of the case, it was held that pleadings of the petitioner did not contain material facts or particulars about the allegations made by him and therefore, it was held that no case for re-count was made out.

5. It may be stated that in the case before the Supreme Court also, there was a difference of only one vote. In the case on hand, the petitioner has not given any particulars or placed on record any material about the allegations made by him or any material submitted along with the application dated 4.1.2000 at Annexure.A for re-counting of the votes. In this view of the matter, relying on the decision of the Supreme Court in the case of Vadivelu (supra), I am of the opinion that no interference is called for with the view taken by the learned Extra Assistant Judge, Bharuch in rejecting the Election Petition No.1 of 2000 for re-counting.

In the result, this petition is rejected. Rule is discharged with no order as to costs.

(K.R. Vyas, J.)

Sreeram.